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In the Supreme Court of the United States

OCTOBER TERM, 1959

No. 282

ALBERT N. SHAHADI and JOSEPHINE SHAHADI,
PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

This case involves the related decisions of the Tax Court (29 T.C. 1157), upheld by the Court of Appeals (266 F.2d 495), imposing liability on the taxpayer, Albert N. Shahadi, for deficiencies in income tax, and additions thereto for fraudulent understatement of income, for the years 1944 through 1949, and on the taxpayer and his wife, Josephine Shahadi, for the year 1950 when they filed a joint return, amounting to a total of $74,536.45. (Pet. 25.)

The case was heard in the Tax Court by Judge Rice, who died before writing an opinion. The case was then assigned to Judge Van Fossan who gave the parties notice that they might request a rehearing or reargument. Neither party made such request, and Judge Van Fossan thereupon made his findings (R. 302a-314a), and wrote his opinion (R. 314a-320a) from the record and the brief filed with him. (Pet. 33.)

The facts, upon which the decisions rest, are set forth in detail and evaluated in the opinion of the Court of Appeals. (Pet. 25-36). It appears from these facts that the taxpayer, a practicing attorney since 1923 (Pet. 26), kept incomplete records of his income, and that his bank deposits for the years 1946-1948, inclusive, showed deposits in excess of reported gross income. (Pet. 27.) Since the taxpayer's explanation of the discrepancy was inadequate, the net worth method of reconstructing income was adopted (Pet. 28), which showed unreported income for the seven years in question, totalling $102,277.74. (Pet. 32, 35.) The taxpayers concede the use of the net worth method of reconstructing their income, but claim that the net worth statement is incorrect on the grounds that it fails to include a cash hoard of $70,000 accumulated prior to December 31, 1943, and includes furs valued at $33,895 and some jewelry allegedly given to Mrs. Shahadi by her mother. (Pet. 28, 29.)

The claim that the furs were a gift rested upon Mrs. Shahadi's testimony, which was contradictory and insubstantial. The claim to a cash hoard rested

entirely upon the taxpayer's assertion that he received a gift of $30,000 in cash from his mother in December 1924, or January 1925; another gift of $20,000 from his father late in 1931; and that he accumulated $20,000 more in cash from earnings, gifts, and inheritances over a period of years prior to 1941. (Pet. 29.) According to the taxpayer, he kept the cash in a safe-deposit box, because he did not trust the secrecy of normal bank deposits in local banks. (Pet. 31.)

The undisputed record facts belied the claim to a cash hoard. The taxpayer's mother never filed a tax return. She died in 1927 leaving a $4,300 estate, and for a number of years she supported a Mrs. Saseen and six children, besides her own family. In 1923, she purchased a $10,000 home, subject to a $4,000 mortgage at six percent interest. (Pet. 29-30.)

The taxpayer's father, who allegedly made a gift to him of $20,000 late in 1931, was adjudicated a bankrupt in 1929, filed no tax return for most of the period, and died in 1947. The taxpayer, as executor of his father's estate, advised the State Transfer Inheritance Tax Bureau, in writing, that the decedent had not made any transfers of a material part of his estate without consideration more than two years before his death. (Pet. 30.)

The taxpayer himself, during the period of the alleged cash hoard, was a tax delinquent on the family home inherited from his mother, and borrowed $3,500 to purchase certain stocks and cashed savings bonds to repay the loan. (Pet. 30.)

On these facts, the Court of Appeals concluded that the taxpayer's claim to a cash hoard was "incredible." (Pet. 31.) It further held that the determinations of the Commissioner and the Tax Court were "rational and fair," and that there was proof of "unreported income attributable to earnings." On the issue of fraud, the Court concluded that "On the whole case, * * * there was ample evidence that the taxpayer acted fraudulently with intent to evade taxes." (Pet. 32.) It went on to rule that the case involved the weighing of the evidence and that the conclusion reached by the Tax Court was sustained by enough evidence so that it was not clearly erroneous. (Pet. 33.)

The taxpayers' principal claim for review here is that the "clearly erroneous" rule of Rule 52(a) of the Federal Rules of Civil Procedure was not applicable upon appellate review, since the case was decided in the Tax Court on a stipulated record, and therefore the taxpayers are entitled to a new trial in the Tax Court, where the credibility of their claim to a cash hoard and gifts of furs and jewelry can be tested by their demeanor. (Pet. 19-21.) This contention is without merit, since the court below has not relied exclusively upon the clearly erroneous rule but has itself evaluated the evidence and found that there was "ample evidence" of fraud. (Pet. 32.) See *Steiner* v. *Mitchell*, 215 F. 2d 171 (C.A. 6th). Moreover, the taxpayers were at most entitled to an evaluation of the evidence by the Court of Appeals, which it performed, not to a new trial in the Tax Court. In view of their waiver of any rehearing in the Tax

Court, the contention of a denial of due process is frivolous. (Pet. 33-34.) And, in the face of the undisputed record facts as to the financial situation of the alleged donors and of the taxpayer himself, the claim to a distant, but vanished, cash hoard presents no issue of credibility. Cf. *Holland* v. *United States*, 348 U.S. 121, 132-136; *Friedberg* v. *United States*, 348 U.S. 142, 144; *Smith* v. *United States*, 348 U.S. 147, 157-158.

The taxpayers' other contentions are also without merit. It is settled that a wife who signs a joint return is liable for fraud, notwithstanding the absence of proof of fraud on her part. *Furnish* v. *Commissioner*, 262 F. 2d 727 (C.A. 9th); *Kann* v. *Commissioner*, 210 F. 2d 247 (C.A. 3d), certiorari denied, 347 U.S. 967; *Howell* v. *Commissioner*, 175 F. 2d 240 (C.A. 6th). There is no conflict with *United States* v. *Massei*, 355 U.S. 595, and *Holland* v. *United States*, 348 U.S. 121 (cf. Pet. 22-23). On the contrary, the decision below is in accord with the rule of those cases that fraud is proved by negating the taxpayer's claim to sources of nontaxable income, where, as here, unreported income is attributable to taxable earnings. (Pet. 32.) See also *Commissioner* v. *Thomas*, 261 F. 2d 643 (C.A. 1st).

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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